



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 13092290

Date: JULY 7, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a security advisor, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially asserted that his proposed endeavor involved "working in security management and counterterrorism in the United States." He further indicated that planned to pursue "a possible redeployment to the Threat and Risk Assessment Unit (TRU)" of the [REDACTED]

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The Director issued a request for evidence (RFE) asking the Petitioner to provide clarification as to his proposed endeavor in the United States. He was informed that he should submit a "detailed description of the proposed endeavor and why it is of national importance."

In response to the Director's RFE, the Petitioner stated: "I would like to continue work and remain with the [REDACTED] for the foreseeable future and my plan is to make applications to transfer to the [REDACTED] [REDACTED] if my visa application is approved. There are many openings in [REDACTED] and it generally takes at least six months to land a position."

The record includes information about U.S. immigration, China's position as a global leader in scientific research, technological advances in Asia as a challenge to U.S. science and technology leadership, the link between education and skill development, and UN pay and benefits. In addition, the Petitioner provided articles discussing global trends and patterns in terrorism, the economic burden of terrorism, threats to U.S. national security, genocide in Sudan, the humanitarian crisis in Darfur, the United Nations-African Union Mission in Darfur (UNAMID), UNAMID's efforts to promote peace in the Darfur region, the UN global counter-terrorism strategy, and U.S. Department of State programs for countering violent extremism. He also submitted information about the impact of terrorism on financial markets, natural events and terrorist attacks as a threat to America's

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner noted that he is "currently the [REDACTED] . . . I conduct research/analysis/assessment and monitor the prevailing country/subregional political, socioeconomic, security situation to determine probable threats/risks to the [REDACTED]" As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

communities [redacted] the [redacted] Development Program in [redacted] the countries of [redacted] the U.S. national security strategy, UN peacekeeping operations, U.S. relations with [redacted] U.S. foreign aid to [redacted] and areas of vital interest to the United States.⁵

In the decision denying the petition, the Director acknowledged the Petitioner's intention to work for the [redacted] but concluded that he did not offer "a detailed description of the proposed endeavor." The Director's decision explained that the Petitioner's statements did "not clarify your proposed endeavor" or "indicate in what capacity you intend to work for the [redacted] only that you wish to work for the [redacted]"⁶ It also noted that the Petitioner "did not provide any additional statement of intent to further specify or explain your proposed endeavor in the United States" The Director further stated that the Petitioner had not sufficiently demonstrated his proposed endeavor stands to have broader implications in the field, significant potential to employ U.S. workers, substantial positive economic effects, or a broader impact on societal welfare.

With the appeal, the Petitioner submits an April 2020 letter from [redacted] a professor of political science at [redacted] University, asserting that the Petitioner satisfies *Dhanasar*'s first prong "because his proposed employment is in a field (security) that is both of substantial intrinsic merit and national in scope." "Substantial *intrinsic* merit" (emphasis added) and "national in scope" are terms set forth in the first prong of the vacated *NYSDOT* framework rather than the first prong of the *Dhanasar* precedent decision. Regardless, the issue here is not the substantial merit and national importance of international security operations or [redacted] programs the Petitioner has served in the past, but rather the substantial merit and national importance of the specific endeavor the Petitioner proposes to undertake.

In his appeal brief, the Petitioner argues that he is eligible for EB-2 classification as an individual of "exceptional ability" and points to his 2018 earnings from the [redacted] However, because the Petitioner qualifies for the underlying EB-2 visa classification as a member of the professions holding an advanced degree, discussion of his eligibility as an individual of exceptional ability would serve no meaningful purpose.⁷

The Petitioner asserts that he "holds 20 years' experience with the [redacted] Police Force and 15 years' experience with the [redacted] in counter-terrorism and security management" and that he has the requisite "education, skills, knowledge and a prior record of success" in his field.⁸ The Petitioner's education,

⁵ While this documentation helps show the substantial merit of U.S. and [redacted] security initiatives, the Petitioner has not identified the specific security projects he plans to undertake in the United States or on our country's behalf.

⁶ In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

⁷ To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

⁸ The Petitioner contends that the Director's decision ignored the Petitioner's law degree and bachelor's degree from the

skills, knowledge, and professional accomplishments relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.⁹

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to work for the [REDACTED] he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to impact U.S. security interests and counterterrorism operations more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s security and counterterrorism projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

University of [REDACTED] The Director, however, determined that the Petitioner’s Bachelor of Science (Political Science/Sociology) degree and evidence of more than five years of progressive experience in his specialty rendered him eligible for the underlying EB-2 visa classification as a member of the professions holding an advanced degree. Furthermore, the Petitioner’s education is a factor that relates to the second prong of the *Dhanasar* precedent. For example, in *Dhanasar*, the record established that the petitioner held multiple graduate degrees including “two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering.” *Id.* at 891.

⁹ In determining whether an individual qualifies for a national interest waiver, USCIS must rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance under the *Dhanasar* framework. Without sufficient information regarding his proposed endeavor, we cannot conclude that he meets the first prong of the *Dhanasar* precedent.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.